

Appl. No. 10/016,411  
Amdt. Dated August 4, 2004  
Reply to Office Action of May 4, 2004

**• • R E M A R K S / A R G U M E N T S • •**

The Official Action of May 4, 2004 has been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment, claim 6 has been written in independent form.

This amendment to claim 6 After Final rejection is deemed to be properly enterable inasmuch as the Examiner has indicated that claim 6 would be allowable if rewritten in independent form.

Accordingly, the changes made herein to claim 6 present claim 6 in allowable form.

Entry of the changes to claim 6 are respectfully requested.

Claims 1-7 remain pending in this application.

Claims 1-5 and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,304,159 to Tanji et al. in view of European Patent Application No. 0 908 162 to Sayama.

On page 4 of the Official Action the Examiner has objected to claim 6 as being dependent upon a rejected base claim, but has otherwise indicated that claim 6 would be allowable if rewritten in independent form.

As noted above, claim 6 has been rewritten in independent form and therefore, is believed to be in condition for allowance.

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For the reasons set forth below, it is submitted that all of the pending claims are allowable over the prior art or record and therefore, each of the outstanding rejections of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon Tanji et al. as disclosing a disposable undergarment having longitudinally opposite end regions and transversely opposite side regions, a liquid impervious base sheet 12, a liquid absorbent panel 13, a liquid pervious topsheet 11, and an elastically stretchable skin-facing sheet 14 attached to the skin-facing side of the topsheet.

The Examiner states that the skin-facing sheet 14 of Tanji et al. comprises fixed regions on longitudinally opposite end regions, a longitudinally middle region, and a pair of transversely side regions helping define leg-holes as shown in figure 1.

The Examiner states that in Tanji et al. the topsheet 11 and the skin-facing sheet 14 are substantially coextensive in the transverse direction, as shown in figure 1.

The Examiner further states that:

The longitudinal central portion of the skin-facing sheet 14 has a width that is smaller than a width of the underlying central portion of the topsheet 11, as shown in figure 2.

The Examiner has relied upon figure 2 of Tanji et al. as teaching that the basis weight and tensile strength of the skin-facing sheet 14 are higher in the transversely opposite side regions 18, than in remaining regions, since the skin-facing sheet is folded onto itself in regions 18, as shown in figure 2.

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The Examiner has relied upon Sayama as disclosing a disposable undergarment that comprises a liquid pervious topsheet 6 and an elastically stretchable skin-facing sheet 30 wherein the skin-facing sheet 30 is bonded to the topsheet 6 inward of the transversely opposite outer terminal side edges of the topsheet 6 as shown in figure 1. The Examiner states that Sayama discloses (at column 3, lines 46-51) that the manner in which the skin-facing sheet 30 is bonded to the topsheet 6 inward of the transversely opposite outer terminal side edges of the topsheet 6 is "equivalent to having the transversely opposite outer terminal side edges of the skin-facing sheet coextensive with the opposite outer terminal side edges of the topsheet."

In combining the teachings of Tanji et al. and Sayama the Examiner takes the position that:

It would have been obvious....to make the skin-facing sheet of Tanji have opposite outer terminal side edges spaced apart from the opposite outer terminal side edges of the topsheet, since the examiner takes official notice of the equivalence of these embodiments, and the selection of either embodiment would be within the level of ordinary skill in the art.

The Examiner's interpretation of Sayama is incorrect.

At column 3, lines 46-51 (cited by the Examiner) Sayama teaches:

According to this embodiment, the respective lower portions 37 are bonded at least over their partial widths along their proximal edges 37A to the topsheet by means of hot melt adhesive 42. Obviously, it is also possible to bond the lower portions 37 to the topsheet 6 over their full widths.

This portion of Sayama does not teach or make any statement that "this embodiment is equivalent to having the transversely opposite outer terminal side edges of the skin-facing sheet coextensive with the opposite outer terminal side edges of the topsheet" as the Examiner purports.

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The Examiner's attention is directed to Sayama's Figs. 2 and 3 which depict an embodiment in which "the respective lower portions 37 are bonded at least over their partial widths along their proximal edges 37A to the topsheet by means of hot melt adhesive 42."

The Examiner's attention is further direction to Sayama's Figs. 4 and 5 which depict embodiments in which "lower portions 37 [that are bonded] to the topsheet 6 over their full widths."

The Examiner has interpreted Sayama's liquid pervious topsheet 6 as reading on applicants' claimed liquid pervious topsheet.

The Examiner has interpreted Sayama's top wall 30 as reading on applicants' claimed skin-facing sheet. However, it is believed that the Examiner actually means to interpret Sayama's outer sheet 34 as reading on applicants' claimed skin-facing sheet, since the top wall 30 is not actually a sheet that has transverse edges and it is not bonded to the topsheet as stated and relied upon by the Examiner.

Assuming this latter interpretation is commensurate with the Examiner's interpretation, it is pointed out that there are no embodiments in Sayama in which the outer topsheet 34 is bonded to the liquid pervious topsheet 6 as the Examiner states with the exception of Fig. 5 in which the transversely opposite side edges of the outer sheet 34 are coextensive with the transversely opposite side edges of liquid previous topsheet 6.

However applicants' independent claim 1 excludes the transverse opposite outer terminal side edges of the liquid-pervious topsheet and of the skin-facing sheet at the longitudinal central portion from being coextensive with one another.

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So there is no teaching in Sayama which corresponds to applicants' claimed structure.

It is noted that wherein Tanji et al. is directed to a disposable diaper that has a central opening 16 that extends along the length thereof, Sayama is directed to a disposable diaper provided with a secondary absorbent pad 36 that is supported above a primary absorbent pad 8 by Z-fold wall members 41.

The walls 41 of Sayama are configured to expand up and down with the lifting and dropping of the secondary absorbent pad 36 as illustrated in Figs. 4 and 5.

It is submitted that the structure and configuration of the walls 41 of Sayama are particular to Sayama and not applicable to Tanji et al. because Tanji et al. does not include the secondary absorbent pad 36 of Sayama and therefore does not require the walls 41 of Sayama.

The walls 41 of Sayama are required to have a Z-fold configuration in order to expand up and down with the lifting and dropping of the secondary absorbent pad 36. As configured by Sayama the bases of the walls 41 have lower portions 37 which can be partially or fully bonded to the topsheet 6 over the primary absorbent pad.

Tanji et al. teaches flaps 17 and 18 rather than side walls. The flaps of Tanji et al. do not have bases that are Z-folded and bonded to the topsheet 11 over the primary absorbent pad.

As stated by the CCPA in *In re Wesslau* (147 USPQ 391 (CCPA 1965)):

It is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. At 393.

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In the present situation it is submitted that the teachings of Tanji et al. and Sayama are not sufficiently related so that one skilled in the art would consider combining the isolated teachings of these reference in the manner suggested by the Examiner, absent impermissible hindsight reliance upon applicants' own disclosure and overlooking or excluding an accurate and full appreciation for what each of Tanji et al. and Sayama actually teach.

Sayama does not teach a functional equivalency between bonding the outer sheet 43 to the topsheet 6 in any manner that can be interpreted as "having the transversely opposite outer terminal side edges of the skin-facing sheet coextensive with the opposite outer terminal side edges of the topsheet" as the Examiner claims.

At best, Sayama only teaches that either a portion or the entire widths of the lower portions 37 of walls 41 can be bonded to the topsheet 6 - and that is actually the lower portions of the inner sheet 38 as show - not the lower portion of the outer sheet 34.

This teaching of equivalents is not even relevant to Tanji et al. in any manner.

The Examiner's position regarding "Official Notice" is improper.

As explained in MPEP 2144.03 "The examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art."

The purported teaching of equivalents in Sayama does not rise to the level of "Official Notice."

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The combination of Tanji et al. and Sayama fails to render obvious a structure in which transverse opposite outer terminal side edges of a skin-facing sheet at the longitudinal central portion are spaced apart upward and inward from the transverse opposite outer terminal side edges of a liquid-pervious topsheet at the longitudinal central portion as the undergarment is curved in a longitudinal direction thereof with the skin-facing side of the liquid-pervious sheet inside.

Any reliance upon Sayama would require the sheet member 14 of Tanji et al. to be bonded to the underlying topsheet so that side edges of the sheet member would not be spaced apart upward from the topsheet.

For the many reasons listed above, it is submitted that Tanji et al. and Sayama clearly have different overall structures and functions which are distinct enough to distinguish one from another so that the combination of the isolated elements is not at all suggested absent disregard for the overall teachings of each.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §102 as anticipating applicants' claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

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It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejections of the claims should hence be withdrawn.

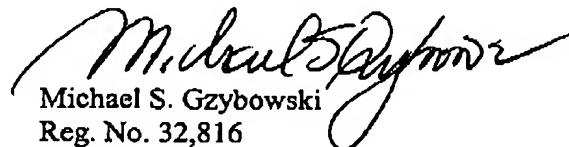
Therefore, entry of the present amendment and reconsideration and withdrawal of the outstanding rejections of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,

  
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